

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2012

SHARON KIST, AS PERSONAL  
REPRESENTATIVE, ETC.,

Appellant,

v.

Case No. 5D10-1836

LORILLARD TOBACCO COMPANY, ET AL.,

Appellee.

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Opinion filed March 9, 2012

Appeal from the Circuit Court  
for Volusia County,  
William A. Parsons, Judge.

Steven L. Brannock, Celene H. Humphries, and  
Tyler K. Pitchford, of Brannock & Humphries,  
and James D. Clark, Don Greiwe, of Alley, Clark  
& Greiwe, Tampa, and Gregory D. Prysock,  
of Morgan & Morgan, P.A., Jacksonville, and  
Keith R. Mitnik, of Morgan & Morgan, P.A.,  
Orlando, for Appellant.

David L. Ross, Elliot H. Scherker, Brigid F. Cech  
Samole, of Greenberg Traurig, P.A., Miami, for  
Appellee, Lorillard Tobacco Company.

Jeffrey E. Bigman, of Smith, Hood, Loucks, Stout,  
Bigman & Brock, P.A., Daytona Beach, David B.  
Thorne and Jennifer M. Voss, of Shook, Hardy &  
Bacon L.L.P., Tampa, and William P. Geraghty  
and Frank Cruz-Alvarez, of Shook, Hardy &  
Bacon, L.L.P., Miami, for Appellee, Philip Morris  
USA, Inc.

Kelly Anne Luther, Maria H. Ruiz and Giselle Gonzalez Manseur, of Kasowitz, Benson, Torres & Friedman, LLP, Miami, for Appellees, Liggett Group LLC and Vector Group Ltd.

PER CURIAM.

Appellant challenges the summary judgment in favor of Lorillard Tobacco Company, Philip Morris USA, Inc., R.J. Reynolds Tobacco Company, Vector Group, Ltd., Inc., and Liggett Group, LLC (collectively "Appellees") in this *Engle*<sup>1</sup>-progeny case. Appellant argues that: (1) summary judgment was premature; (2) summary judgment was improper because Appellees did not prove the absence of fact issues; and (3) summary judgment was improper as to the civil conspiracy count. We affirm the trial court's summary judgment on all counts, except the civil conspiracy count. As to that count, we adopt the well-reasoned opinion of our sister court in *Rey v. Philip Morris, Inc.*, 75 So. 3d 378 (Fla. 3d DCA 2011).<sup>2</sup>

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

GRIFFIN, TORPY and LAWSON, JJ., concur.

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<sup>1</sup> *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246 (Fla. 2006).

<sup>2</sup> At oral argument, counsel alerted this Court that Vector Group, Ltd., had not been a defendant in *Engle* and might have other defenses not yet addressed below. For clarity, our decision today only addresses issues that were properly before us.